MONTANA LEGISLATIVE HISTORY

Chapter 174 19 97

Bill H _____ S 108 Original bill & history ✓C

H. Committee on Nat. Resources		S. Committee on Nat. Resources	
Hearing Date(s) 3-5-97	✓C	Hearing Date(s) 1-15-97	✓C
3-10-97	✓C	1-29-97	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3-10-97	✓C	out 1/27/97	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

3/13	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 87		
	EFFECTIVE DATE: 10/01/97		

SB 104 INTRODUCED BY BECK, ET AL. *LC0193 DRAFTER: MALY*

AUTHORIZE THE DEPARTMENT OF COMMERCE TO REVIEW THE BOOKS AND AFFAIRS OF BANK HOLDING COMPANIES

BY REQUEST OF DEPARTMENT OF COMMERCE

1/01	INTRODUCED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/06	FIRST READING		
1/14	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	50	0
1/28	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO BUSINESS & LABOR		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	90	9
3/15	3RD READING CONCURRED	86	13
	RETURNED TO SENATE		
3/19	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 148		
	EFFECTIVE DATE: 10/01/97		

SB 105 INTRODUCED BY BECK *LC0605 DRAFTER: CAMPBELL*

REQUIRE A LOW-VOLTAGE ELECTRICIAN'S LICENSE FOR PERSONS WIRING FOR, INSTALLING, AND REPAIRING LIFE AND PROPERTY PROTECTION EQUIPMENT

1/01	INTRODUCED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 106 INTRODUCED BY VAN VALKENBURG *LC0266 DRAFTER: MACMASTER*

REVISE DRIVING UNDER THE INFLUENCE LAWS WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR BOTH, IN A PERSON'S BODY

BY REQUEST OF DEPARTMENT OF JUSTICE

1/01	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/12	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/14	HEARING		

1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	29	20
1/24	3RD READING PASSED	29	19
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
2/14	TAKEN FROM COMMITTEE		
2/14	REREFERRED TO CORRECTIONS SELECT COMMITTEE		
3/04	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	83	15
3/13	3RD READING CONCURRED	85	15
	RETURNED TO SENATE		
3/14	SIGNED BY PRESIDENT		
3/15	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 88		
	EFFECTIVE DATE: 10/01/97		

SB 107 INTRODUCED BY BECK *LC0192 DRAFTER: STERNBERG*

REVISE CERTAIN PROVISIONS REGARDING AGRICULTURAL COMMODITY STANDARDS, STORAGE, AND MERCHANDISING

BY REQUEST OF DEPARTMENT OF AGRICULTURE

1/01	INTRODUCED		
1/03	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/12	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/17	HEARING		
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	47	2
1/24	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/06	HEARING		
2/12	COMMITTEE REPORT—BILL CONCURRED		
3/05	2ND READING CONCURRED	99	1
3/06	3RD READING CONCURRED	100	0
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/12	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 76		
	EFFECTIVE DATE: 07/01/97		

SB 108 INTRODUCED BY BECK *LC0214 DRAFTER: COLHOUN*

REVISE WATER ADJUDICATION LAWS

BY REQUEST OF MONTANA WATER ADJUDICATION ADVISORY COUNCIL

1/01	INTRODUCED		
1/03	REFERRED TO NATURAL RESOURCES		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		

1/12	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/15	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	48	0
1/31	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO NATURAL RESOURCES		
3/05	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	91	6
3/15	3RD READING CONCURRED	90	8
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	50	0
3/20	3RD READING CONCURRED AS AMENDED	50	0
3/25	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/26	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 174		
	EFFECTIVE DATE: 03/28/97		

SB 109 INTRODUCED BY HOLDEN *LC0322 DRAFTER: NISS*

PROVIDE FOR CERTIFICATION BY THE DEPARTMENT OF CORRECTIONS OF APPROPRIATIONS FOR YOUTH COURT AND PROBATION FOSTER CARE PLACEMENTS

BY REQUEST OF DEPARTMENT OF CORRECTIONS

1/01	INTRODUCED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/13	REREFERRED TO JUDICIARY		
1/16	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/23	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	49	0
2/11	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/12	FIRST READING		
2/12	REFERRED TO CORRECTIONS SELECT COMMITTEE		
3/06	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	98	1
3/14	3RD READING CONCURRED	96	1
	RETURNED TO SENATE WITH AMENDMENTS		
3/15	REREFERRED TO FINANCE & CLAIMS TO CONSIDER HOUSE AMENDMENTS		
3/15	REVISED FISCAL NOTE REQUESTED		
3/20	HEARING		
3/20	REVISED FISCAL NOTE RECEIVED		
3/20	COMMITTEE REPORT—RECOMMENDED HOUSE AMENDMENTS BE CONCURRED IN		
3/20	REVISED FISCAL NOTE PRINTED		
3/22	2ND READING AMENDMENTS CONCURRED	49	0
3/24	3RD READING CONCURRED AS AMENDED	49	1
3/27	SIGNED BY PRESIDENT		

3/27	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 189		
	EFFECTIVE DATE: 04/01/97—SECTIONS 21 & 31		
	EFFECTIVE DATE: 07/01/97—SECTION 4		
	EFFECTIVE DATE: 10/01/97—SECTIONS 1-3, 5-20 & 22-30		

SB 110 INTRODUCED BY BECK *LC0324 DRAFTER: FOX*

AUTHORIZE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARD A YOUTH'S CARE, CUSTODY, AND TREATMENT

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

1/01	INTRODUCED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/15	HEARING		
1/16	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	41	5
1/27	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/28	FIRST READING		
1/28	REFERRED TO JUDICIARY		
3/07	HEARING		
3/07	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 111 INTRODUCED BY WATERMAN *LC0386 DRAFTER: NISS*

PROVIDE FOR MONTHLY REPORTS TO POLICYHOLDERS, PROVIDE DEFINITIONS, REGULATE POLICY TERMS, ETC., RELATED TO LONG-TERM CARE INSURANCE

BY REQUEST OF STATE AUDITOR

1/01	INTRODUCED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/21	HEARING		
1/29	TABLED IN COMMITTEE		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 112 INTRODUCED BY VAN VALKENBURG *LC0390 DRAFTER: MALY*

CREATE A VIATICAL SETTLEMENT ACT

BY REQUEST OF STATE AUDITOR

1/01	INTRODUCED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FIRST READING		
1/21	HEARING		
1/29	TABLED IN COMMITTEE		
2/13	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED	50	0

SENATE BILL NO. 108

INTRODUCED BY BECK

BY REQUEST OF THE MONTANA WATER ADJUDICATION ADVISORY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER ADJUDICATION LAWS; ALLOWING THE WATER COURT TO ADJUDICATE ABANDONMENT OF WATER RIGHTS; ALLOWING A WATER JUDGE TO CONSIDER RELEVANT EVIDENCE ARISING BEFORE OR AFTER JULY 1, 1973; PROVIDING FOR THE WATER COURT TO ENTER A TEMPORARY PRELIMINARY DECREE FOR ANY CATEGORY OF CLAIM THAT REQUIRES ADJUDICATION; REQUIRING OBJECTIONS TO BE FILED AT THE INITIAL DECREE STAGE; ALLOWING CLAIMANTS AND OBJECTORS TO AMEND THEIR CLAIMS OR OBJECTIONS; GIVING CLAIMANTS AN OPPORTUNITY TO FILE COUNTEROBJECTIONS; ENCOURAGING INCREASED USE OF ALTERNATIVE DISPUTE RESOLUTION; CLARIFYING THE PROCESS FOR ADMINISTERING WATER RIGHTS PENDING ADJUDICATION; AMENDING SECTIONS 3-7-501, 85-2-227, 85-2-231, 85-2-233, AND 85-2-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-7-501, MCA, *is amended to read:*

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) ~~No~~ A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for ~~his~~ the judge's division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within ~~his~~ the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(4) The determination and interpretation of existing water rights includes, without limitation, the

adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."

Section 2. Section 85-2-227, MCA, is amended to read:

"**85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment.** (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) A water judge may determine all or part of an existing water right to be abandoned based on a consideration of all relevant evidence, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973."

Section 3. Section 85-2-231, MCA, is amended to read:

"**85-2-231. Temporary preliminary and preliminary decree.** (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree ~~shall~~ must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree ~~shall~~ must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon ~~thereafter~~ after the close of that period as is reasonably feasible.

(c) ~~This section does not prevent the~~ The water judge ~~from issuing~~ may issue an interlocutory decree ~~or other temporary decree, pursuant to 85-2-321 or as provided in subsection (1) of this section,~~ ~~or~~ if ~~such a~~ an interlocutory decree is otherwise necessary for the orderly administration of water rights ~~prior to the issuance of a preliminary decree~~.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees ~~or portions of the same decree~~.

(4) The temporary preliminary decree or preliminary decree ~~shall~~ must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. ~~The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.~~

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree ~~set forth in subsections (1) and (3)~~ and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not ~~so~~ satisfied, ~~he~~ the water judge may~~, at his option,~~ recommit the report to the master with instructions~~,~~ or modify the report and issue the preliminary decree.

~~(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree.~~"

Section 4. Section 85-2-233, MCA, is amended to read:

"**85-2-233. Hearing on temporary preliminary decree or preliminary decree -- procedure.** (1) (a) For good cause shown and subject to the provisions of subsection ~~(7)~~ (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before [the effective date of this act]. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree~~,~~ unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After [the effective date of this act], a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) ~~If a hearing is requested, the request~~ Objections must be filed with the water judge within 180

days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

~~(3)~~(4) ~~The request for a hearing~~ Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

~~(4)~~(5) (a) Upon expiration of the time for filing ~~objections and upon timely receipt of a request for a hearing~~ counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records that ~~a hearing has been requested~~ objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings ~~must~~ are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(c), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this subsection must be borne by the moving party.

~~(5)~~(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

~~(6)~~(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

~~(7)~~(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

~~(8)~~(10) The provisions of subsection ~~(7)~~ (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence."

Section 5. Section 85-2-406, MCA, is amended to read:

"**85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision ~~shall~~ must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have ~~not~~ been conclusively determined according to part 2 of this chapter ~~or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings,~~ any party to the controversy ~~or any person whose rights are or may be affected by enforcement of the decree~~ may petition the district court ~~for relief~~ to certify the matter to the chief water judge. If a

certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought ~~may~~ shall retain exclusive jurisdiction to grant injunctive or other relief ~~which~~ that is necessary and appropriate ~~to preserve property rights or the status quo pending the issuance of the final decree~~ pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district ~~court that issued the final decree~~ court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) ~~(a)~~ A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

~~(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter.~~"

NEW SECTION. **Section 6. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0108, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising water adjudication laws; allowing the Water Court to adjudicate abandonment of water rights; allowing a water judge to consider relevant evidence arising before or after July 1, 1973; providing for the Water Court to enter a temporary preliminary decree for any category of claim that requires adjuciation; requiring objections to be filed at the initial decree stage; allowing claimants and objectors to amend their claims or objections; giving claimants an opportunity to file counter objections; encouraging increased use of alternative dispute resolution; clarifying the process for administering water rights pending adjudication.

ASSUMPTIONS:
Department of Natural Resources and Conservation:
1. The results of this legislation will not increase the workload or expenses incurred by the DNRC in its role of providing assistance to the Montana Water Court.
2. Because counter objections may now be filed, the objection list prepared by the Water Court may be slightly larger. DNRC, at the court's direction, mails the notice of the objection/counter objection list to water users. The number of individual water users noticed is not expected to increase.

Judiciary:
1. Because counter objections may now be filed, the objection list prepared by the Water Court may be slightly larger; however, it is anticipated that the adjudication process will be improved and expedited.
2. The workload of Water Court staff should not be significantly impacted.

FISCAL IMPACT:
No fiscal impact anticipated to DNRC or Judiciary.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
1. It is anticipated the adjudication process will be improved and expedited. Th legislation will assist the administration of water rights among water right holder and clarify the allocation of water resources among competing interests.
2. The proposed legislation clarifies many issues which otherwise would require much tim and expense to answer through litigation and development of case law.
3. Since claimants will now be required to file objections at the initial decree stage duplication of effort by the Water Court will be reduced and claimants will have t defend the right only once.

Dave Lewis 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Tom Beck 1/14
TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0108, as introduced

SB 108

SENATE NATURAL RESOURCES

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0108	BECK, TOM 1/03	1/15	REVISE WATER ADJUDICATION LAWS	PASS AS AMENDED VOTE:		1/28
SB0146	BISHOP, AL 1/09	2/05	SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS	TABLED ON 02/11 VOTE:		
SB0175	SWYSGOOD, CHARLES 1/14	1/31	RATIFY STATE-BLM RESERVED WATER RIGHTS COMPACT	PASS AS AMENDED VOTE:		2/07
SB0223	COLE, MACK 1/25	2/03	CLARIFY AUTHORITY OF COAL BOARD TO ASSIST LOCAL GOVERNMENTS	PASS AS AMENDED VOTE:		2/11
SB0224	COLE, MACK 1/25	2/03	GENERALLY REVISE THE MONTANA MAJOR FACILITY SITING ACT	PASS AS AMENDED VOTE:		2/14
SB0253	LYNCH, J. D. 1/30	2/05	REVISING SOLID WASTE DEFINITION	TABLED ON 02/20 VOTE:		
SB0273	NELSON, LINDA 2/03	2/07	RESERVATION OF WATER FOR CERTIFICATE	DO PASS VOTE:		2/11
SB0310	GROSFIELD, LORENTS 2/08	2/12	LOANS FOR WATER USERS ASSOCIATIONS	PASS AS AMENDED VOTE:		2/14
SB0322	GROSFIELD, LORENTS 2/10	2/14	ESTABLISH ABANDONED MINE RECLAMATION AS PRIORITY FOR GRANTS	PASS AS AMENDED VOTE:		2/20
SB0323	HERTEL, JOHN 2/10	2/14	REVISE CONSERVATION EASEMENT LAW	TABLED ON 02/20 VOTE:		
SB0332	MILLER, KEN 2/11	2/14	REQUIRE WASTE TIRE DISPOSAL SITES TO GIVE FINANCE ASSURANCE OF WORK QUALITY	DO PASS VOTE:		2/20
SB0334	GROSFIELD, LORENTS 2/12	2/17	IMPLEMENT ARTICLE IX, SECTION 1 OF THE MT CONSTITUTION	DO PASS VOTE:		2/20

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 15,1997, at 1:00 PM, in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 108; Posted January 9, 1997
Executive Action: SB 50, SB 59, SB 72

HEARING ON SB 108

Sponsor: SEN. TOM BECK, SD 28, Deer Lodge

Proponents:
John Bloomquist, Montana Stockgrowers Association
Mike Murphy, Montana Water Resources Association
Bud Clinch, Dept. of Natural Resources and Conservation (DNRC)
Harley Harris, Montana Power Company
Susan Cottingham, DNRC, Reserved Water Rights Compact Commission, (RWRCC)
Holly Franz, Montana Power Company
Lorna Frank Karn, Montana Farm Bureau
Barry Hedrich, Ringling, Mt.
Carol Stolen, Women Involved In Farm Economics

Opponents: **Sen. Lorents Grosfield**

{Tape: 1, Side: A; Approx. Time Count: :00 Comments: None.}

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, Deer Lodge, summarized last session's comments of the adjudication process as being slow and cumbersome. He said a study was undergone as a response to this opinion. This bill contains the results of this study (Report Of The Montana Water Adjudication Advisory Committee). **(EXHIBIT 1)** He stated this bill allows the Water Court to get the job done in a more streamlined fashion. The bill allows the water court to: adjudicate abandoned water rights in a faster manner; have an opportunity to look at relevant evidence before and after July 1, 1973,ie.,to look at all evidence; and limit objections.

Proponents' Testimony

John Bloomquist, Montana Stockgrowers Association, presented the Report Of The Montana Water Adjudication Advisory Committee. **(EXHIBIT 1)** The purpose of the advisory committee was to look at the adjudication process and to make recommendations on ways to improve and expedite the adjudication of this state's existing water rights.
Mr. Bloomquist explained the Committee's background, members involved, and assistance obtained from other credible entities. He stated that page 4 of the report identified the recommendations of the Committee, some of which are in SB 108. The Committee formulated the issues by seeking comments and response from various constituents. Next, these issues received were then formulated into four categories:
1) Adjudication procedures;
2) Interim and administration of water rights;
3) Accuracy and validity of adjudication decrees which are being produced;
4) Prioritization issues.
Mr. Bloomquist, explained the bill further by section.
SB108 Section 1.(Recommendation No. 5 in report) deals with the authority of the water court to adjudicate post 1973 abandonment of water rights.
Section 2. Abandonment issue relating to the question of whether post 1973 evidence is admissible and is it relevant to the water court adjudication process.
Section 3. (Committee Recommendation No. 2) Allow water court to enter temporary preliminary decrees for any category of claims that may require adjudication.
Section 4. (Recommendation No. 1) This is a fairly significant change in terms of how many decrees the Water Court would issue in the adjudication process. Presently, the Court can issue a temporary preliminary decree which involves state based water rights, which were filed and examined by DNRC. A compact may come along that involves federal rights and tribal rights, that would be melded into the temporary preliminary decree and what would be

then issued would be called a preliminary decree and both would be subject again to objection. This bill proposes that when the water court issues a decree, that decree is subjected to objections only once, those objections will be handled, and the decree will be issued. **Mr. Bloomquist** conveyed that the bill basically eliminates a level or step in adjudication process, to a one-step objection process.
Recommendation No. 4 allows claimants an opportunity to file counter-objections to water rights of other objectors. (SB 108, page 5, line 4-8.)
There will be a counter-objection period allowed so water court can deal with the concern of the water rights.
Recommendation No. 7 allows increased use of alternative dispute resolution mechanisms. (referring to page 5, lines 21-23 of SB 108.)
Recommendation No. 3 allows claimants and objectors to amend their claims and objections as long as other potentially affected claimants are provided notice. (SB 108, Page 5, lines 24-30)
This attempts to put the water court procedures more in line with other civil procedures.
Recommendation No. 8 (Section 5 of the bill) clarifies the process for administering water rights during the pendency of the adjudication. These changes allow the district judge to certify those particular water rights to the Water Court, then the court has right to adjudicate those rights. **Mr. Bloomquist** felt that this provision could reduce multiplicity of litigation.
He again urged the passage of the bill, and stated this bill is an effort to streamline the adjudication process, so the job can get done.

Mike Murphy, Montana Water Resources Association, is in full support of the committee and the bill, and believes it expedites the process.

Bud Clinch, Dept. of Natural Resources and Conservation, Director, for all the reasons **John Bloomquist** has stated the Department supports the recommendations in the report and in the legislation and urges a do pass. **(EXHIBIT 2)**

Harley Harris, Attorney General's Office, supports the bill because of two major principles: 1.) Reduces duplication; and 2.) Frees the water court up to get the job done.

Holly Franz, Montana Power Company, supports the bill because it expedites the process and ensures accuracy of decrees.

Lorna Frank-Karn, Montana Farm Bureau, supports SB 108 and feels it will clarify and speed up the adjudication process.

Barry Hedrick, Ringling, Montana, stated he was a committee member, representative of Montana Stockgrowers Association, and a private rancher who is in support of this legislation. The changes proposed by this measure will streamline process, promote

timely resolution, eliminate redundancy and costly litigation. **(EXHIBIT 3)**

{Tape: 1; Side: A; Approx. Time Count: 1:20; Comments: .}

Carol Stolon, Women Involved In Farm Economics, (WIFE), stated they were in support of this bill, SB 108.

Susan Cottingham, Staff Director of the Reserved Water Rights Compact Commission, commented on the committee, reiterating what an outstanding job they had done, and that the commission supports the recommendations. She conveyed the changes would give the Water Court the flexibility to move forward and urged a do pass.

At this point, **CHAIRMAN GROSFIELD** turned the gavel over to **VICE CHAIRMAN CRISMORE.**

Opponents' Testimony:

SENATOR LORENTS GROSFIELD, Big Timber, first started off his testimony with an apology concerning his inability to serve on the advisory committee. He stated that this bill does some very serious things to our water right laws and wanted the committee to realize the extent, and judiciary issues. The first thing that this bill changes is with the determination of abandonment. If one has not used their right over an indefinite amount of time, then it can be abandoned, and our statutes allow for that. An example was a situation where there was a period of 40 years of non-use, and the case was determined abandoned. Our statutes after 1973 and after the adjudication on a stream is complete, a right can be declared abandoned after 10 years of non-use. For pre-1973 water rights, the water court would have jurisdiction in that area after 1973. The question arises, "what does that mean?" This is an important question that is not addressed in this bill. Another concern that this bill contains a "sour grape" provision saying that if somebody objects to you at the last minute, then your objection period is extended.

Questions From the Committee And Discussion:

SEN. COLE asked **Mr. Harris** about the effects of the expedient procedure, and will there be any effect on the compact negotiation?
Mr. Harris restated the question as what would be the relationship between the federal reserve rights in a given basin and state rights if this bill passed? He described the problem that exists today under the current law that we are dealing with respect to the relationship between state rights and federal reserve rights. All the state based rights have to go through DNRC to be verified before they can be adjudicated, before the Water Court can take a look at them and open them up to objections. The federal reserved rights under current law, with exception of the Blackfoot Tribe, are within the negotiation

process that is in the jurisdiction of the Compact Commission. The problem that has arisen is that the speed and processing of state based and reserved water rights has been at different rates. The two types of rights will never be on the same time track. Essentially, what we propose to do in this bill is to some extent allow those two types of claims to be adjudicated somewhat independently. Why wait for the reserved water rights to be adjudicated, or conversely, why wait for the state rights to be adjudicated, as was the case with the Northern Cheyenne reserved rights. **Mr. Harris** answered the second part of the question, how does this jive with the ongoing negotiations of the tribes, by referring to Recommendation No. 11, the increased communications. What the compact commission has found is that some tribes would feel that adjudication of even state claims near or on the reservation would hinder negotiations or adversely effect them. As a general matter regarding communications between the water court and the compact commission it would be best if it was dealt with on a case by case basis.
SEN COLE asked a question concerning the stage of decree.
Mr. Harris said the final decree, the absolute final word on the whole basin, isn't going to be entered until everything is ready. The problem under the current law is that one would have to wait for everything to be ready even to do a preliminary decree. The bill would carve out that one layer. Eventually, the final decree has to have everything in it, and in the process getting to that final decree, everybody in the basin gets one fair shot at everybody else.

Sen. Cole asked about pre and post 1973 situations.

{Tape: 1; Side: B; Approx. Time Count: 1:45 ; Comments: .}

Mr. Harris responded to both **SEN. GROSFIELD'S** comments and to **SEN. COLE** by saying that when adjudication was initially set up, it was intended to adjudicate all existing rights, defined in statute- all water rights with the priority date of 1973 or before. After 1973, you had to get a permit from the Dept. of Natural Resources. What was set up in the water use act at that time, was that all the issues of abandonment had to be dealt with by DNRC. Everyone needs to recognize the fact that the adjudication will take time, before the bulk of the state of Montana is decreed. In this bill, the recommendations, with respect to abandonment, are essentially designed to be dealt with by the water court. While the water court is looking at the basin and doing decrees, let the court do it all at once. Let us decree things as they appear today, because it is hard to prove things what they looked like prior to 1973. A pre-1973 water right would still be subject to common law rules of abandonment. The number of years before it is declared abandoned is a question of fact. If it is a post 73 right you have the statutory abandonment. The intention of the pre and post 1973 issues is mostly looking at evidence.

Mr. Bloomquist added that, regarding the concern of **SEN. GROSFIELD** on changing the law of abandonment, it doesn't. **Mr. Bloomquist** stated the law of abandonment is a common law test. He cited several cases with varying number of years, (23 yrs., 40 yrs.) that raised the presumption of abandonment, requiring the water right holder to bring in evidence for the lack of intent. Abandonment is a question of fact. The court would set and weigh the facts. He did not believe that any saying in the jurisdiction statute changes the law of abandonment.

SEN. GROSFIELD asked **Don McIntyre, DNRC,** about the jurisdiction process involving the different basins and the stages of adjudications and if this process were to be speeded up to some degree, would this effect or bring up an equal protection issue?

Mr. McIntyre responded that the changes made here are not of the nature that rise to an equal protection such that it would endanger the entire adjudication process. However, there may be a possibility that an equal protection issue could appear in the process of objections. Generally, equal protection arguments would not survive.

SEN. GROSFIELD asked **Mr. Harris** about the "sour grape" amendment, located on Page 5, lines 4-8 of the bill concerning the time for filing objections, and asked if that was a typical provision?
Mr. Harris responded that it was and all that they were trying to accomplish in that provision was to attempt to mirror the normal civil process of procedure, where there is a period built in the rules for filing a counterclaim. The intention there was two-fold: 1) to reduce the opportunities for neighbor versus neighbor disputes from two to one; 2) To install an element of fairness in the process due to the tendency that the current "drop dead" objection deadline results in the person who filed the objection having the advantage.

SEN. VAN VALKENBURG requested **Mr. Clinch, DNRC,** to summarize the money spent and review budget for water adjudication for the coming biennium.
Mr. Clinch replied that he could not provide that to the committee at this time.
SEN. VAN VALKENBURG requested the information for the next meeting.

SEN. GROSFIELD followed up on that point and asked **Judge Bruce Loble, Chief Water Judge, Montana Water Court,** if he perceived a fiscal impact or timeliness problem of getting this whole thing done.
Judge Loble commented that he did not see a fiscal impact because he saw this bill as shortening the whole outcome of the adjudication and making it much quicker to get over with. He believed that it will focus the water court where there are actual on-stream disputes, and that will in turn, get the court working in that area. It will have a positive impact on the adjudication. In respect to the abandonment, **Judge Loble** asked a

question, "do you think the 40 years is not long enough or the 10 is years too short."
SEN. GROSFIELD replied that wasn't his point, it was directed at equal protection and the lack of clarity with respect to that. He agreed that abandonment is a fact of the situation but he was unclear about how the ten year provision in the statutes would address this.

Judge Loble said, one of the reasons that he thought the abandonment issue the way its been structured and proposed in the bill is a good idea is because of an argument concerning that there is no abandonment of water rights after 1973. He cited an example of a hundred acre ranch that was subdivided into one acre parcels, and the deed would say the owner had a water right of 0.64 of a 200 inch right, meanwhile no ditch existed in the whole subdivision. Someone could raise that as an issue. **Judge Loble** explained that if this bill passed then the water court could hear argument on the abandonment of those water rights, and the bill in general would be a positive impact.

Closing by Sponsor:

SEN. BECK closed by saying that this bill expedites the process and emphasized that somehow these water rights have to come to a conclusion. He believed that today there is little reason for abandoned water rights to become an issue anymore. Leasing of in-stream flow is an option today that did not exist 50 years ago. Regarding the objection process, it appeared to him that objections in any court have to come to a conclusion also. This bill is just trying to put objections in the same scenario as other objections are. He estimated that all courts will have some fiscal impact, the water court and all district courts. The whole intent of this bill is to come to a conclusion, or a decree of water in the State of Montana, at least a temporary decree. He asked the committee to give this some serious consideration.

{Tape: 1; Side: B; Approx. Time Count: 2:00; Comments: .}

EXECUTIVE ACTION ON SB 50

Amendments: None

Motion/Vote: SEN. THOMAS KEATING MOVED A DO PASS FOR SB50. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 59

Amendments: None

Motion/Vote: SEN. VIVIAN BROOKE MOVED A DO PASS FOR SB59. MOTION CARRIED UNANIMOUSLY

EXECUTIVE ACTION ON SB 72

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1/15/97
BILL NO. SB 108

REPORT OF

THE MONTANA WATER ADJUDICATION ADVISORY COMMITTEE

TO

MONTANA SUPREME COURT
THE 55TH MONTANA LEGISLATURE
GOVERNOR OF MONTANA
MONTANA WATER COURT
MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

October 1, 1996

COMMITTEE MEMBERS

Water Users

Barry R. Hedrich
Eugene Manley
Vernon L. Westlake

Non-Government Attorneys

John E. Bloomquist
R. Mark Josephson
Wm. Russell McElyea

Ex Officio

James J. DuBois
Attorney, U.S. Department of Justice

Harley R. Harris
Assistant Montana Attorney General

Donald D. MacIntyre
Chief Legal Counsel
Department of Natural Resources and Conservation

)ert W. Stone
r of Law Emeritus
Montana School of Law

Exhibit # 1 SB108
30 pages
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 1/15/97
BILL NO. 108

2

TESTIMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
SENATE BILL NO. 108
MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

Pursuant to Senate Bill 387 (1995) a Water Adjudication Advisory Committee was appointed to provide recommendations to the Water Court, the Montana Supreme Court, the Montana Department of Natural Resources and Conservation, and the legislature on methods to "improve and expedite" the water adjudication process. As required by Senate Bill 387 the Committee has made its recommendations. The recommendations are contained in the October 1, 1996 "Report of the Montana Water Adjudication Advisory Committee to Montana Supreme Court, the 55th Montana Legislature, Governor of Montana, Montana Water Court, Montana Department of Natural Resources and Conservation" (hereinafter Report).

The Department of Natural Resources and Conservation supports the legislative recommendations made in the Report. The Report at pages 6 through 11 (copy attached) contains the specific legislative recommendations to improve and expedite the adjudication. This material describes the problems with the current law and explains the reasoning and recommendation of the Committee to legislatively address the problems.

The Hedrich Ranch

Barry, Chris, Hank and Molly Hedrich
P.O. Box 93
Ringling, MT 59642
(406) 547-3753

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1/15/97
BILL NO. 108

January 15, 1997

Senate Natural Resources Committee
1997 State of Montana Legislature
Helena, Montana

RE: Senate Bill 108

Ladies and Gentleman:

The purpose of this letter is to encourage your favorable support for the adoption of Senate Bill 108.

Senate Bill 387 (1995), passed by the Fifty-Fourth Legislature, and signed into law, directed the Chief Water Judge to appoint a Water Adjudication Advisory Committee. The Committee as established was directed to provide recommendations to the Water Court, Montana Supreme Court, Department of Natural Resources and Legislature with means by which the water adjudication process may be improved and expedited.

Having had the privilege of serving on this committee it is with confidence that I ask your support of the proposed changes to the laws of the State of Montana. The changes as proposed will streamline the State of Montana's Water Rights adjudication process. The changes as proposed will allow those agencies and individuals charged with the daunting task of reviewing these Water Rights to more effectively utilize time and resources. The changes as proposed should be of benefit to all parties involved by promoting the timely resolution of conflict and striving to eliminate redundant and costly litigation.

I furthermore encourage your continued support of those individuals and agencies involved in the Water Rights Adjudication process. Their efforts in this regard are both cost effective and quite timely given the complexity of the process and the enormous number of participants which are involved in this endeavor.

It is important that all citizens of Montana understand the importance and future implications of our Water Rights Adjudication process. A thorough, timely and just review of the water resources here in Montana which allows for and insures due process will be of great importance in insuring the right and ability of future generations here in Montana to enjoy the benefits derived from judicious use of these water resources.

Respectfully,

Barry Hedrich

MONTANA SENATE
1997 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 1/24/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. VIVIAN BROOKE	✓		
SEN. MACK COLE	✓		
SEN. TOM KEATING	✓		
SEN. DALE MAHLUM	✓		
SEN. BEA MC CARTHY	✓		
SEN. KEN MILLER	✓		
SEN. MIKE TAYLOR	✓		
SEN. FRED VAN VALKENBURG	✓		
SEN. BILL CRISMORE, VICE CHAIRMAN	✓		
SEN. LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 27, 1997, at 1:00 P.M., in Room 405.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: None
Executive Action: SB 97, SB 108, HB 118

CHAIRMAN LORENTS GROSFIELD relinquished the chair to VICE CHAIRMAN WILLIAM CRISMORE because he was unable to be there to open the Committee meeting.

EXECUTIVE ACTION ON SB 97

Motion/Vote: **SEN. MACK COLE MOVED TO RECONSIDER AMENDMENT sb09701.alm BY SEN. GROSFIELD. Motion CARRIED 9-1.**

SEN. MACK COLE referred to Page 2, New Section 19, Part 2, and said he wanted to delete that portion because it had a part which could end up being controversial if passed, especially in 2(a), providing for exclusive authority by the state to issue permits, etc. He explained if there was a situation where there was an agreement, it could have items on how the administration would

EXECUTIVE ACTION ON SB 108

Amendments: **CHAIRMAN LORENTS GROSFIELD** explained Amendments sb010801.alm **(EXHIBIT 1)** as follows: (1) #2 was a clarification because Page 2, Subsection (2), Line 12, talked about admissible evidence while Subsection (3), Line 15, talked about relevant evidence. He was concerned the different terms could mean something different so on Line 15 he struck "relevant evidence" and inserted "admissible evidence that is relevant"; (2) #3 on Page 5, Line 27, went to "amended claims or amended objects" because the Water Court had to publish that in newspapers; however, the average citizen would not understand there could be an additional objection opportunity. This amendment clarified that the bill now said notice must specify any response, and he was adding "or objection to the proposed amendment" must be filed; thus clarifying to members of the public there probably was an opportunity there to object if a claim was changed significantly; (3) #4 added "finally" in temporary sections. Subsection (5) explained the abandonment provisions didn't apply to existing rights until they were determined in accordance with Part 2 of this chapter. He was concerned Part 2 was changed to say a temporary preliminary or preliminary decree was enforceable. He opined sometime in the future somebody was going to argue there was an enforceable decree; therefore abandonment should begin at that date. The interpretation of that part of the abandonment section has been final adjudication. He expressed concern about the abandonment issue in the bill but thought the clarification would help.

Discussion: **SEN. TOM KEATING** asked why "relevant evidence" was changed in only one place. **CHAIRMAN GROSFIELD** referred to Line 12, "relevant evidence under this part may include admissible evidence", and explained he was trying to make the language the same.

SEN. VIVIAN BROOKE asked if it was assumed that relevant evidence would be admissible. **CHAIRMAN GROSFIELD** said any admissible evidence that was relevant; however, he didn't think it was presumed because that was up to the judge.

Motion/Vote: **CHAIRMAN LORENTS GROSFIELD MOVED DO PASS ON AMENDMENTS sb010801.alm (EXHIBIT 1). Motion CARRIED UNANIMOUSLY 10-0.**

Discussion: **CHAIRMAN GROSFIELD** continued answering **SEN. BROOKE'S** question by saying he sensed the prosecuting attorney felt a bit differently. He explained this whole process began a number of years ago by people coming in on their own, working through it without hiring attorneys; it worked pretty well. He was concerned this amendment became a sort of lawyers relief act because anybody who got an objection filed against them was immediately going to try to find something they could pick apart on the person who filed the objection against them.

CHAIRMAN LORENTS GROSFIELD relinquished the chair to VICE CHAIRMAN WILLIAM CRISMORE because he had to leave to present a bill.

SEN. FRED VAN VALKENBURG used the following illustration: A landlord had a relationship with a tenant; however, the situation had not gone well so the tenant moved out. The tenant didn't pay the last month's rent so the landlord had a right to go to court to try to recover that rent; however, the landlord was just happy the situation was over so nothing was done in that regard. However, two months later the tenant sued for wrongful eviction.

SEN. VAN VALKENBURG said the landlord should not be precluded from asking for the last month's unpaid rent; that was what counter objections were about and why there should be the ability to pursue them.

Motion/Vote: **SEN. TOM KEATING MOVED DO PASS SB 108 AS AMENDED. Motion CARRIED UNANIMOUSLY 10-0.**

EXECUTIVE ACTION ON HB 118

Motion/Vote: **SEN. MACK COLE MOVED DO PASS ON AMENDMENT HB011801.alm (EXHIBIT 2). Motion CARRIED UNANIMOUSLY 10-0.**

Discussion: **SEN. MIKE TAYLOR** asked for clarification on the buildings and was told this amendment was about a building with an ongoing obligation which was required to go through the bidding process, etc., that was there before.

MOTION/VOTE: **SEN. KEN MILLED MOVED HB 118 AS AMENDED BE CONCURRED IN. Motion CARRIED UNANIMOUSLY 10-0.**

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1/27/97
BILL NO. SB 108

Amendments to Senate Bill No. 108
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Larry Mitchell
January 27, 1997

1. Title, line 14.
Following: "85-2-233,"
Insert: "85-2-404,"

2. Page 2, line 15.
Strike: "relevant evidence"
Insert: "admissible evidence that is relevant"

3. Page 5, line 27.
Following: "response"
Insert: "or objection to the proposed amendment"

4. Page 6.
Following: line 16.

Section 5. Section 85-2-404, MCA, is amended to read:
"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439, or a temporary change

pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-404. (Effective July 1, 1999) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The use of water pursuant to 85-2-439 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

85-2-404. (Effective July 1, 2005) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has

abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter."

{*Internal References to 85-2-404:*
85-2-405 ok *85-2-405 ok*}

Renumber: subsequent sections

SENATE STANDING COMMITTEE REPORT

January 27, 1997

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 108 (first reading copy -- white), respectfully report that SB 108 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 14.
Following: "85-2-233,"
Insert: "85-2-404,"

2. Page 2, line 15.
Strike: "relevant evidence"
Insert: "admissible evidence that is relevant"

3. Page 5, line 27.
Following: "response"
Insert: "or objection to the proposed amendment"

4. Page 6.
Following: line 16.

Section 5. Section 85-2-404, MCA, is amended to read:

"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

Amd. Coord.
Sec. of Senate

191653SC.SRF

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439, or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-404. (Effective July 1, 1999) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The use of water pursuant to 85-2-439 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

85-2-404. (Effective July 1, 2005) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter."

Renumber: subsequent sections

-END-

MONTANA SENATE
1997 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 1/27/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. VIVIAN BROOKE	✓		
SEN. MACK COLE	✓		
SEN. TOM KEATING	✓		
SEN. DALE MAHLUM	✓		
SEN. BEA MC CARTHY	✓		
SEN. KEN MILLER	✓		
SEN. MIKE TAYLOR	✓		
SEN. FRED VAN VALKENBURG	✓		
SEN. BILL CRISMORE, VICE CHAIRMAN	✓		
SEN. LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

- BILL NO -	REFERRED -	HEARING -	OTHER CONSIDERATION DATES -	EXECUTIVE ACTION/DATE/VOTE -------	RE-REFERRED ----	DATE READ
	2/08	2/19		TABLED ON 02/19 VOTE: 18-0		
SB0001	GROSFIELD, LORENTS 1/17	2/03	CLARIFY NITRATE WATER QUALITY MEASUREMENT	CONCUR 2/7 VOTE: 12-6		2/11
SB0050	KEATING, THOMAS 1/24	1/31	ALLOWING THE "BLANKET" ASSIGNMENT, RELEASE, ETC., OF OIL/GAS/MINERAL LEASES	CONCUR 2/5 VOTE: 18-0		2/06
SB0059	SWYSGOOD, CHARLES 1/24	1/31	EXTEND RESERVED WATER RIGHTS COMPACT COMMISSION	CONCUR 2/5 VOTE: 17-1		2/06
SB0072	MESAROS, KEN 1/24	2/03	FORMALIZE WATER INFORMATION SYSTEM AS PART OF NRIS	CONCUR 2/7 VOTE: 18-0		2/11
SB0097	GROSFIELD, LORENTS 2/03	3/05	REVISE WATER LAWS	3/21 VOTE: 12-6		
SB0108	BECK, TOM 2/01	3/05	REVISE WATER ADJUDICATION LAWS	CONCUR AS AMENDED 3/10 VOTE: 18-0		3/11
SB0131	MESAROS, KEN 1/27	2/03	INCREASE ALLOWABLE ACREAGE FOR SCHOOL FACILITY	CONCUR 2/7 VOTE: 18-0		2/11
SB0175	SWYSGOOD, CHARLES 2/12	3/07	RATIFY STATE-BLM RESERVED WATER RIGHTS COMPACT	CONCUR 3/10 VOTE: 18-0		3/11
SB0223	COLE, MACK 2/17	3/07	CLARIFY AUTHORITY OF COAL BOARD TO ASSIST LOCAL GOVERNMENTS	CONCUR 3/10 VOTE: 18-0		3/11
SB0224	COLE, MACK 2/22	3/14	REVISING THE MAJOR FACILITY SITING ACT	3/21 VOTE: 15-3		
SB0273	NELSON, LINDA 2/21	3/21	RESERVATION OF WATER FOR CERTIFICATE 3/24	CONCUR AS AMENDED 4/2 VOTE: 18-0		
SB0315	MCCARTHY, BEA		REVISE SOLID WASTE CONTAINER SITE DEFINITION			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on March 5, 1997, at 3:15 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Tuss

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 97 (2/21), SB 108 (2/21)
Executive Action: none

HEARING ON SB 108

Opening Statement by Sponsor: Sen. Tom Beck, SD #28
{Tape: 1; Side: a; Approx. Time Count: 1.3; Comments: none.}

Proponents' Testimony:
John Bloomquist, attorney from Helena, submitted Exhibit #1
{Tape: 1; Side: a; Approx. Time Count: 3.0; Comments: Exhibit #1.}

Mike Murphy, MT Water Resources Association
{Tape: 1; Side: a; Approx. Time Count: 17.3; Comments: none.}

John Youngberg, MT Farm Bureau
{Tape: 1; Side: a; Approx. Time Count: 18.2; Comments: none.}

Susan Cottingham, MT Water Reserved Water Rights Compact Commission
{Tape: 1; Side: a; Approx. Time Count: 19.1; Comments: none.}

Holly Franz, MT Power Company
{Tape: 1; Side: a; Approx. Time Count: 21.1; Comments: none.}

Harley Harris, Assistant Attorney General
{Tape: 1; Side: a; Approx. Time Count: 21.1; Comments: none.}

Don MacIntyre, attorney for Department of Natural Resources and Conservation submitted Exhibit 2
{Tape: 1; Side: a; Approx. Time Count: 22.4; Comments: Exhibit #2.}

Jan Rehberg, attorney, representing herself submitted Exhibit #3
{Tape: 1; Side: a; Approx. Time Count: 23.1; Comments: Exhibit #3.}

Opponents' Testimony: none

Informational Testimony:
Bruce Loble, Judge MT Water Court
{Tape: 1; Side: a; Approx. Time Count: 27.9; Comments: none.}

Questions From Committee Members and Responses:
{Tape: 1; Side: a; Approx. Time Count: 28.1; Comments: none.}

Closing by Sponsor:
Sen. Beck closed
{Tape: 1; Side: b; Approx. Time Count: 4.9; Comments: none.}

HEARING ON HB 97

Opening Statement by Sponsor:
Sen. Lorents Grosfield, SD #13
{Tape: 1; Side: b; Approx. Time Count: 5.7; Comments: none.}

Proponents' Testimony:
Don MacIntyre, Department of Natural Resources and Conservation submitted Exhibit #4

SB 108
3/5/97
Exhibit #1

REPORT OF

THE MONTANA WATER ADJUDICATION ADVISORY COMMITTEE

TO

MONTANA SUPREME COURT
THE 55TH MONTANA LEGISLATURE
GOVERNOR OF MONTANA
MONTANA WATER COURT
MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

October 1, 1996

COMMITTEE MEMBERS

Water Users

Barry R. Hedrich
Eugene Manley
Vernon L. Westlake

Non-Government Attorneys

John E. Bloomquist
R. Mark Josephson
Wm. Russell McElyea

Ex Officio

James J. DuBois
Attorney, U.S. Department of Justice

Harley R. Harris
Assistant Montana Attorney General

Exhibit # 1 (30 pages)
Report Booklet

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

exhibit #2
SB108
3/5/97

TESTIMONY BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
SENATE BILL NO. 108
MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

Pursuant to Senate Bill 387 (1995) a Water Adjudication Advisory Committee was appointed to provide recommendations to the Water Court, the Montana Supreme Court, the Montana Department of Natural Resources and Conservation, and the legislature on methods to "improve and expedite" the water adjudication process. As required by Senate Bill 387 the Committee has made its recommendations. The recommendations are contained in the October 1, 1996 "Report of the Montana Water Adjudication Advisory Committee to Montana Supreme Court, the 55th Montana Legislature, Governor of Montana, Montana Water Court, Montana Department of Natural Resources and Conservation" (hereinafter Report).

The Department of Natural Resources and Conservation supports the legislative recommendations made in the Report. The Report at pages 6 through 11 (copy attached) contains the specific legislative recommendations to improve and expedite the adjudication. This material describes the problems with the current law and explains the reasoning and recommendation of the Committee to legislatively address the problems. The Department supports the bill as amended in the Senate.

Don MacIntyre

C. Specific Recommendations to Improve and Expedite the Adjudication:

1. Adjudication Procedure

a. The Committee recommends that Mont. Code Ann. § 85-2-233 be amended to require objections to be filed at the initial decree stage.

Problem: Under the current version of Mont. Code Ann. § 85-2-233(1)(c), claimants are not required to object at the temporary preliminary decree stage, and may reserve their objections to other water right claims until a preliminary decree is entered in the basin. Thus, when the Water Court enters a temporary preliminary decrees there is no assurance that all of the objections that exist with respect to the rights encompassed in that temporary preliminary decrees will be resolved. This creates duplication of effort for the Court, which may have to adjudicate claims twice; and for the parties themselves, some of whom may be required to defend their rights twice. It also raises the possibility that the same right may be decreed in a different and possible inconsistent manner at different stages of the adjudication.

Recommendation: The Committee recommends that Mont. Code Ann. § 85-2-233 be amended to provide that, with respect to future decrees, claimants must object or run the risk of waiving their objection unless substantial reasons can be given as to why they did not object earlier. The revision would not alter the rights of claimants who were party to previously entered temporary preliminary decrees. Under the recommendation, previously issued temporary preliminary decrees could be reissued requiring that all objections be filed. This amendment will

provide two benefits with respect to future decrees: (1) make them more readily enforceable because once they are entered there will be some assurance that all outstanding objections have been addressed; and (2) reduce the multiplicity of litigation and potential for inconsistent results and thus expedite the adjudication.

b. The Committee recommends that Mont. Code Ann. § 85-2-231(3) be amended to allow the Water Court to enter temporary preliminary decrees for any category of claims that require adjudication.

Problem: One source of significant delay in the current adjudication arises from the timing of the processing of the various categories of water rights that exist in most Montana water adjudication basins. In addition to water rights arising under state law (i.e., appropriative rights), Montana has jurisdiction under the McCarran Amendment (43 U.S.C. § 666) to adjudicate the water rights held by the United States for both federal agencies and Indian tribes. See generally Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). The "timing" problem arises for two reasons. First, the actual adjudication of federal and Indian reserved water rights is suspended while compact negotiations with the Montana Reserved Water Rights Compact Commission take place. See Mont. Code Ann. § 85-2-217 (1995). Second, when the adjudication was commenced the prevailing view was that both state and federal reserved water rights had to be incorporated into "unified" preliminary decrees, and all of those rights adjudicated at the same time. This view was based on two presumptions: (1) that neither the verification of state-based rights or the negotiation of federal reserved water rights would take more than a few years, and thus that both categories of claims would be ready for adjudication at roughly the same time; and (2) that in order to be a comprehensive adjudication under the McCarran Amendment, all claims had to be adjudicated at precisely the same time.

These presumptions have not been borne out. First, there is no basin in Montana where all of the federal reserved rights and all of the state-based rights have become ready for adjudication at the same time. The greatest bottleneck has arisen in those basins where there are large blocks of federal reserved water right claims. Given the potential magnitude of such claims and the complexity involved in resolving them through negotiations, it may be some time before they are finally compacted or otherwise ready for adjudication. However, in many of those same basins all of the state-based rights are currently ready to be adjudicated. The Committee believed that the Water Court should have the ability to adjudicate those rights even if federal reserved rights aren't yet ready. Conversely, in several basins compacts have been reached before state-based rights have been ready to adjudicate. In that case the Water Court should be able to adjudicate the validity of the compact without having to wait for the state-based rights as well. The ability to proceed with respect to compacts is especially important since many of them may require timely approval by the Water Court prior to state and federal funding of water augmentation programs--such as the repair and enlargement of the Tongue River Dam.

Second, the McCarran Amendment doesn't require "unified" preliminary decrees; or that all of the water rights in a basin must be decreed at precisely the same time. All other states that are currently conducting general stream adjudications under the McCarran Amendment break up the process into manageable parts (or pathways) and enter decrees for different

categories of claims at times different than other categories of claims. As long as the underlying elements of a McCarran Amendment adjudication are met--i.e. all significant rights will be eventually folded into the process, and all parties to the adjudication get at least one opportunity to object to every other right (see generally Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)), there should be no reason why Montana cannot also break its adjudication into manageable components and process claims in a rational and efficient manner.

Recommendation: The Committee recommends that Mont. Code Ann. § 85-2-231(3) be amended to allow the entry of enforceable temporary preliminary decrees for either state-based rights or federal reserved rights, as necessary. The Water Court retains power to skip the temporary preliminary decrees stage and enter a preliminary decree if all claims in the basin are ready. Under the amendment the Water Court may adjudicate state or federal reserved water right claims, or approve federal reserved water right compacts, when necessary and without the need to wait until the other types of claims in the same basin are ready to proceed. When all necessary claims are ready to be adjudicated, a preliminary decree would be entered which would contain all remaining unadjudicated claims and fold in those that were previously adjudicated in the temporary preliminary decrees; but objections would only be allowed with respect to the previously unadjudicated rights unless substantial reasons can be given why new objections to previously decreed rights should be allowed. Final decrees would then be entered when all outstanding objections have been resolved.

c. The Committee recommends Mont. Code Ann. § 85-2-233 be amended to allow claimants and objectors to amend their claims or objections as long as other potentially affected claimants are provided notice.

Problem: The Committee was concerned that if claimants are given only one opportunity to adjudicate their rights that it be as fair and flexible as possible.

Recommendation: The Committee recommends that Mont. Code Ann. § 85-2-233 be amended by adding a new section to allow claimants to amend their claims or objections at any time before a final decision of the Water Court on that claim or objection in a manner and under circumstances similar to how pleadings may be amended in other litigation under Rule 15 M.R.Civ.P. The ultimate objective is that water rights should be decided on their merits rather than on procedural grounds. The amendment of claims after the entry of a Notice of Availability of a temporary preliminary decree or a preliminary decree may create the need to give additional notice to other potentially affected claimants. The Committee's proposal reflects this in according the Water Court the power to require any party seeking an amendment to provide published and such other notice that is appropriate under the circumstances.

d. The Committee recommends Mont. Code Ann. § 85-2-233 be amended to allow claimants an opportunity to file counter-objections to water rights of other objectors.

Problem: Claimants often wait until the very last day to file an objection against a neighbor. Because of the objection deadline the neighbor, who had not filed an objection (often

to avoid controversy), has no opportunity to react. In that situation, the "surprise" objector may have an advantage in litigation and settlement.

Recommendation: The Committee recommends that Mont. Code Ann. § 85-2-233 be amended by adding a new subsection to allow counter-objections in the same manner as counterclaims are allowed under Rule 13 M.R.Civ.P. While the Committee believes that all claimants should be vigilant about their claims and the claims of their neighbors, and should file whatever meritorious objections they have regardless of whether their neighbor intends to or not, the Committee believes that this amendment will allow disputes between neighbors to be decided on the merits rather than through procedural traps for the unwary.

e. The Committee recommends Mont. Code Ann. §§ 3-7-501 and 85-2-227 be amended so that the Water Court's authority to adjudicate post 1973 abandonment of water rights be statutorily recognized.

The Problem: There is an argument under the current law that the Water Court should not consider evidence of abandonment occurring in whole or in part after July 1, 1973 (the date the Montana Water Use Act was enacted).

Recommendation: The Committee recommends that Mont. Code Ann. § 3-7-501 be amended to clarify the Water Court's ability to decree post-1973 abandonment; and Mont. Code Ann. § 85-2-227 be amended to specify that post-1973 evidence may be relevant in the adjudication and may be considered by the Water Court in issuing final decrees.

f. The Committee recommends that the Water Court Rules of Procedure be reviewed to assure their usefulness and consistency with statutes.

Problem: Concern was raised as to whether the current Water Court Rules of Procedure adequately describe the adjudication process so that a practitioner or pro se claimant could consult them and determine how to approach a particular question.

Recommendation: The current Water Court procedures should be reviewed to assure their consistency with actual practice as well as being adequately descriptive. After the next legislature has acted upon any recommendations of this Committee, a committee should be convened to review the Water Court Rules of Procedure and report to the Supreme Court on any necessary amendments or revisions.

g. The Committee recognizes the need for the Water Court to promote consistent decision making and acknowledges the Water Court's current practices are sufficient.

Problem: Some claimants and practitioners raised concerns that water masters are resolving similar issues in inconsistent manners.

Recommendation: The Committee agreed that water masters should try to pay close attention to the decisions of other water masters, but that given the differing factual contexts under which legal issues arise it is impossible to come up with a "bright-line" rule that would secure the desired consistency without restricting the discretion that water masters need to function properly. If a "consistent" legal rule is necessary parties can, and have the responsibility, to secure it through an objection to a water judge or, if necessary, through appeal to the Montana Supreme Court. The Court's current practice of indexing its significant decisions should continue.

h. The Committee recommends Mont. Code Ann. § 85-2-233 be amended to allow increased use of alternative dispute resolution mechanisms.

Problem: The Committee agreed that an increased emphasis on alternative dispute resolution is appropriate. The more difficult issues revolve around where the resources would come from to implement such a program and whether the program should be mandatory.

Recommendation: Amend Mont. Code Ann. § 85-2-233 to add a new section specifically authorizing referral of adjudication cases to a settlement master or a mediator.

2. Interim Administration of Water Rights

a. The Committee recommends Mont. Code Ann. § 85-2-406 be amended to clarify the process for administering water rights during the pendency of the adjudication.

Problem: Since 1973 Montana's approach to adjudicating water rights has changed many times. Most significant was the change to a statewide adjudication and the creation of the Water Court. Laws of Montana 1979, Ch. 697. Gradually the water right distribution statute, Mont. Code Ann. § 85-2-406 (1995), has became a patchwork of amendments that are confusing and may require duplicative and expensive litigation. While the Water Court adjudicates water rights, it cannot provide injunctive relief pending its final decision. While the district court can issue injunctive relief and temporarily settle a dispute between parties, it does not have jurisdiction to adjudicate water rights and its temporary settlement is not binding on the Water Court. This creates a situation in which a district court water rights dispute might have to be re-tried in front of the Water Court.

Recommendation: The Committee recommends amending Mont. Code Ann. § 85-2-406 to clarify which court parties go to in order to settle water right disputes and to reduce expensive duplicate litigation. Anyone wondering where and how a water right dispute is settled would have to refer only to this one statute. It would clearly cover three situations:

1. If a district court decree exists and the Water Court has not yet issued an enforceable new decree, the district court has the authority to enforce its old decree.

2. If there is no old decree or if one of the parties to the old decree does not consider it accurate, and the Water Court has not issued a new decree for that basin (or that decree is not yet enforceable), the parties to the controversy may go to district court and request the matter be certified to the Water Court. Upon such a request the district court would certify the matter to the Water Court which then adjudicates the water rights. After adjudicating the water rights, the Water Court returns the matter to the district court for enforcement. During the interim, the district court has the power to grant injunctive relief. The Water Court decision would be binding on the parties to the certification controversy. This process can be used to resolve disputes between some or all of the users on a stream, and it focuses the Water Court's resources and attention on those areas where water right disputes are actually occurring.

3. A Water Court decree or a portion thereof, as modified after objections and hearings, would be enforceable by the district court.

While Montana's statewide adjudication proceeds, water still needs to be distributed and controversies between neighbors resolved. Much confusion now exists over the jurisdiction of the district courts and the Water Court in these matters. With Mont. Code Ann. § 85-2-406 amended as this Committee has proposed, water users and their attorneys will be able to look at one statute to find out for their situation how water is distributed and how interim disputes are settled. Local district courts remain the focal point for distribution and interim relief, but Water Court resources are used to settle real controversies, and duplicative litigation is eliminated. (Confusing and outdated language from past amendments has also been eliminated from Mont. Code Ann. § 85-2-406 (1995)).

3. Accuracy and Validity of Adjudication Decrees

a. The Committee recommends DNRC make greater use of direct claimant contact in its examination of water right claims.

Problem: Prior to the issuance of a decree for a basin, DNRC examines each claim for completeness, accuracy, and reasonableness. All elements of a claim, individually and in combination, are checked using examination rules adopted by the Montana Supreme Court. If apparent discrepancies in the claimed water right are found, the claimant is contacted to discuss the issues. If the discrepancies can be resolved, the claim is amended by the claimant. If the issues cannot be resolved, the claimed water right remains as claimed, and DNRC adds a potential issue remark to the claim record. An exception to a claim remaining in its original form is the element of flow rate. For water rights not previously decreed by a district court, the DNRC applies a flow rate standard which may adjust the claimed flow rate. After all claims in a basin are examined, DNRC issues a Summary Report to the Water Court. The Water Court uses this report to prepare the decree for the basin.

It was recognized if more issues, especially factual issues, could be resolved during the examination of a claim, the number of objections could be reduced and thus reduce the workload of the Water Court.

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Exhibit #3
SB108
3/5/97

necessary to assure timely and accurate compliance with the claim filing procedure.

(3) The water judge may relieve a party from abandonment or forfeiture of a claim under 85-2-226, as follows:

(a) For claims filed after April 30, 1982 but before the issuance of a temporary preliminary decree, relief may be granted to any claim to which no objection is filed. If objection is filed, relief may be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.

(b) For claims filed after the entry of a temporary preliminary decree ~~July 1, 1996~~, but before the issuance of a preliminary decree, relief may be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.

(c) For claims filed after the entry of a preliminary decree, relief may only be granted under the provisions of Rule 60, Montana Rules of Civil Procedure.

(4) The Montana supreme court and the water court are encouraged to adopt procedural rules required to implement the provisions of subsection (3)."

Insert: **Section 3.** Section 85-2-221, M.C.A., is amended to read:

85-2-221. Filing of claim of existing water right -- filing late claim. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as

Bchberg

provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1) as provided under 85-2-214. Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1, 1993, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department ~~on or before July 1, 1996~~, on forms provided by the department. This section is ~~not~~ intended to ~~prevent~~ allow the filing of a late claim ~~in addition to a claim of an existing water right filed on or before April 30, 1982~~, if and to the extent that the ~~additional right claimed is~~ late claim does not assert a ~~the same as the~~ right that was the subject of a previous claim ~~and is not~~ or an abandoned right. ~~Claims must be physically~~

~~submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. The~~ Late claims are ~~then~~ subject to adjudication by the ~~district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:~~ water court, subject to the provisions of this part, rules adopted by the Montana Supreme Court or the water court, and the following:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have taken place prior to the date of filing;

(b) the person filing a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982;

(c) a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July 1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of such a compact that

subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge~~, following objection under 85-2-233,~~ finds that the right represented in the late claim was the subject of a prior order or decree by the water judge, is an abandoned right or is otherwise without merit, the water judge shall award costs and reasonable attorney fees to the person or persons filing ~~the~~ an objection to the late claim. The court may award other fees and costs against the party asserting a late claim as it determines just under the circumstances.

(e) a right represented in a late claim ~~is~~ may be subordinated to all federal and Indian reserved water rights established by compact ~~or decree~~ under this chapter upon such terms as the court determines just under the circumstances. ~~;~~

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim may ~~is,~~ in addition, be subordinated to any other water right established by decree under this chapter upon such terms as the court determines just under the circumstances;

~~(i) rights represented in all valid, timely filed claims; and~~

~~(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.~~

~~(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted.~~

Insert **Section 4.** Section 85-2-225, M.C.A., is amended to read:

85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) ~~no~~ a filing fee is not required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion ~~thereof~~ of the decree.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single

development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $150, which must be deposited in the water rights adjudication account for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2).

(b) The water judge ~~shall~~ may assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of ~~the~~ a late claim, ~~and~~ the consideration of ~~the~~ an objection to a late claim or~~,~~ ~~which~~ in reaching a determination whether to relieve a party from abandonment or forfeiture as provided in 85-2-214. Any assessment rendered by the court must be deposited in the water rights adjudication account;

(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before a date to be established by the department by rule, but no later than July 1, 1999.

Insert **Section 5.** Section 85-2-226, M.C.A., is amended to read:

85-2-226. Abandonment by failure to file claim. Except as provided in 85-2-214, ~~The~~ failure to file a claim of an existing

right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right.

Renumber: subsequent sections.

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 3/5/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Bob Raney	✓		
Rep. Jon Ellingson	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Carley Tuss	✓		excused come late
Rep. Trudi Schmidt	✓		
Rep. Emily Swanson	✓		
Rep. Robert R. Story, Jr.	✓		come late
Rep. Haley Beaudry	✓		
Rep. Douglas T. Wagner	✓		
Rep. Doug Mood	✓		
Rep. Scott J. Orr	✓		
Rep. Cliff Trexler	✓		
Rep. Lila V. Taylor	✓		
Rep. Jay Stovall	✓		
Rep. Karl Ohs	✓		
Chairman Dick Knox	✓		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

NATURAL RESOURCE COMMITTEE BILL NO. SB 108

DATE: 3/5/97 SPONSOR(S) Sen. Beck

PLEASE PRINT LEGIBLY

NAME & ADDRESS	REPRESENTING	BILL	PROPONENT	OPPONENT	INFORMA-TION WITNESS
Don MacIntyre	DNRC	108	✓		
Susan Cottingham	RWRCC	108	✓		
J. Rehberg	self	108	✓		
Mike Murphy	MWRA	108	✓		
Jim Graham	MFBC	108	✓		
Bruce Lobble	MT Water Ct	108			✓
John Youngberg	MT Farm Bureau	108	✓		
Debra Bloomquist	Mt. Stockgrowers	108	✓		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on March 10, 1997, at 3:00 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 377, SB 332
Executive Action:	SB 108 DO CONCUR AS AMENDED (18-0), SB 175 DO CONCUR AS AMENDED (18-0), SB 223 DO CONCUR AS AMENDED (18-0)

Rep. Knox handed out information from Fritz Daly about the Berkeley Pitt marked as **Exhibit #1.**
{Tape: 1; Side: a; Approx. Time Count: 1.7; Comments: Exhibit #1.}

HEARING ON SB 332

Opening Statement by Sponsor:
Sen. Ken Miller, SD #11
{Tape: 2; Side: a; Approx. Time Count: 9.6; Comments: none.}

Proponents' Testimony:
Jan Sensibaugh, Department of Environmental Quality submitted Exhibit #6
{Tape: 2; Side: a; Approx. Time Count: 13.9; Comments: Exhibit #6.}

Brad Griffin, Tire Retailers of the State
{Tape: 2; Side: a; Approx. Time Count: 14.8; Comments: none.}

Anne Hedges, Montana Environmental Information Center
{Tape: 2; Side: a; Approx. Time Count: 15.8; Comments: none.}

Opponents' Testimony: none

Questions From Committee Members and Responses:
{Tape: 2; Side: a; Approx. Time Count: 16.5; Comments: none.}

{Tape: 2; Side: a; Approx. Time Count: end; Comments: flipped tape at the very end.}

{Tape: 2; Side: b; Approx. Time Count: 0.1; Comments: none.}

Closing by Sponsor:
Sen. Miller closed
{Tape: 2; Side: b; Approx. Time Count: 7.8; Comments: none.}

EXECUTIVE ACTION ON SB 108

Motion: Rep. Trexler moved DO CONCUR
{Tape: 2; Side: b; Approx. Time Count: 14.8; Comments: none.}

Amendments: sb010801.akw submitted and moved by Rep. Trexler

Discussion: Rep. Orr asked if the water users had been asked their opinion regarding the amendment. Rep. Trexler said yes, and their opinion was that the phrase "in whole or" made no difference.

Motion/Vote: Question on the amendment, (18-0) passed unanimously

Discussion: Rep. Beaudry asked what happened to Jan Rehberg's amendment. Rep. Harper addressed the question.
{Tape: 2; Side: b; Approx. Time Count: 18.6; Comments: none.}

Vote: voice vote, DO CONCUR as AMENDED (18-0), Rep. Ohs will carry this on the House floor

EXECUTIVE ACTION ON SB 175

Motion: Rep. Harper, DO CONCUR
{Tape: 2; Side: b; Approx. Time Count: 23.6; Comments: none.}

Discussion: Rep. Story will carry this on the floor

Motion/Vote: voice vote, unanimously (18-0) DO CONCUR

EXECUTIVE ACTION ON SB 223

Motion: Rep. Ellingson; DO CONCUR
{Tape: 2; Side: b; Approx. Time Count: 25.8; Comments: none.}

Discussion: Rep. Harper
{Tape: 2; Side: b; Approx. Time Count: 27.0; Comments: none.}

Motion/Vote: voice vote, unanimously (18-0) DO CONCUR Rep. Holland will carry the Bill on the floor

HOUSE STANDING COMMITTEE REPORT

March 11, 1997

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 108** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox

Dick Knox, Chair

And, that such amendments read: **Carried by: Rep. Ohs**

1. Page 6, line 28.
Strike: "in whole or"

2. Page 7, line 21.
Strike: "in whole or"

3. Page 8, line 14.
Strike: "in whole or"

-END-

3/11

Committee Vote:
Yes 18, No 0.

530916SC.Hgd

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 3/10/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		left
Rep. Bob Raney	✓		
Rep. Jon Ellingson	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Carley Tuss	✓		
Rep. Trudi Schmidt	✓		
Rep. Emily Swanson	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Haley Beaudry	✓		
Rep. Douglas T. Wagner	✓		
Rep. Doug Mood	✓		
Rep. Scott J. Orr	✓		
Rep. Cliff Trexler	✓		
Rep. Lila V. Taylor	✓		
Rep. Jay Stovall	✓		
Rep. Karl Ohs	✓		left
Chairman Dick Knox	✓		left

Amendments to **Senate Bill No. 108**
Third Reading Copy

Requested by **Rep. Trexler**
For the Committee on Natural Resources

Prepared by Kathleen Williams
March 7, 1997

1. Page 6, line 28.
Strike: "in whole or"

2. Page 7, line 21.
Strike: "in whole or"

3. Page 8, line 14.
Strike: "in whole or"

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 3/10/97

BILL NO. SB 108

MOTION: BY: Taylor, DO CONCUR

Trexler, DO Concur as amended

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)			
Rep. Hal Harper (VC Min.)			
Rep. Bob Raney			
Rep. Jon Ellingson			—
Rep. Aubyn A. Curtiss			
Rep. Carley Tuss			
Rep. Trudi Schmidt			—
Rep. Emily Swanson			
Rep. Robert R. Story, Jr.			
Rep. Haley Beaudry			
Rep. Douglas T. Wagner			
Rep. Doug Mood			
Rep. Scott J. Orr			
Rep. Cliff Trexler			
Rep. Lila V. Taylor			
Rep. Jay Stovall			
Rep. Karl Ohs			
Chairman Dick Knox			

Total Vote: 18 Yes ~~0~~ No

Decision: Concurred in

Amendments

Motion: amendment accepted ~~as~~ adopted

vote on amendment: 18-0

amendment file name: sb010801.2kw

Ohs will carry on House floor

SENATE BILL NO. 108

INTRODUCED BY BECK

BY REQUEST OF THE MONTANA WATER ADJUDICATION ADVISORY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER ADJUDICATION LAWS; ALLOWING THE WATER COURT TO ADJUDICATE ABANDONMENT OF WATER RIGHTS; ALLOWING A WATER JUDGE TO CONSIDER RELEVANT EVIDENCE ARISING BEFORE OR AFTER JULY 1, 1973; PROVIDING FOR THE WATER COURT TO ENTER A TEMPORARY PRELIMINARY DECREE FOR ANY CATEGORY OF CLAIM THAT REQUIRES ADJUDICATION; REQUIRING OBJECTIONS TO BE FILED AT THE INITIAL DECREE STAGE; ALLOWING CLAIMANTS AND OBJECTORS TO AMEND THEIR CLAIMS OR OBJECTIONS; GIVING CLAIMANTS AN OPPORTUNITY TO FILE COUNTEROBJECTIONS; ENCOURAGING INCREASED USE OF ALTERNATIVE DISPUTE RESOLUTION; CLARIFYING THE PROCESS FOR ADMINISTERING WATER RIGHTS PENDING ADJUDICATION; AMENDING SECTIONS 3-7-501, 85-2-227, 85-2-231, 85-2-233, 85-2-404, AND 85-2-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-7-501, MCA, is amended to read:

"**3-7-501. Jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) ~~No~~ A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for ~~his~~ the judge's division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within ~~his~~ the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."

Section 2. Section 85-2-227, MCA, is amended to read:

"**85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment.** (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) A water judge may determine all or part of an existing water right to be abandoned based on a consideration of all ~~relevant evidence~~ ADMISSIBLE EVIDENCE THAT IS RELEVANT, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973."

Section 3. Section 85-2-231, MCA, is amended to read:

"**85-2-231. Temporary preliminary and preliminary decree.** (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree ~~shall~~ must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree ~~shall~~ must be issued within 90 days after the close of the special filing

period set out in 85-2-702(3) or as soon ~~thereafter~~ after the close of that period as is reasonably feasible.

(c) ~~This section does not prevent the~~ The water judge ~~from issuing~~ may issue an interlocutory decree ~~or other temporary decree, pursuant to 85-2-321 or as provided in subsection (1) of this section,~~ ~~or~~ if ~~such a~~ an interlocutory decree is otherwise necessary for the orderly administration of water rights ~~prior to the issuance of a preliminary decree~~.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees ~~or portions of the same decree~~.

(4) The temporary preliminary decree or preliminary decree ~~shall~~ must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. ~~The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.~~

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree ~~set forth in subsections (1) and (3)~~ and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not ~~so~~ satisfied, ~~he~~ the water judge may~~, at his option,~~ recommit the report to the master with instructions~~,~~ or modify the report and issue the preliminary decree.

~~(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree.~~"

Section 4. Section 85-2-233, MCA, is amended to read:

"**85-2-233. Hearing on temporary preliminary decree or preliminary decree -- procedure.** (1) (a) For good cause shown and subject to the provisions of subsection ~~(7)~~ (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before [the effective date of this act]. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After [the effective date of this act], a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) ~~If a hearing is requested, the request~~ Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

~~(3)~~(4) ~~The request for a hearing~~ Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

~~(4)~~(5) (a) Upon expiration of the time for filing ~~objections and upon timely receipt of a request for a hearing~~ counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records that ~~a hearing has been requested~~ objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings ~~must~~ are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response OR OBJECTION TO THE PROPOSED AMENDMENT must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the

notice required pursuant to this subsection must be borne by the moving party.

~~(5)~~(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

~~(6)~~(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

~~(7)~~(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

~~(8)~~(10) The provisions of subsection ~~(7)~~ (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence."

SECTION 5. SECTION 85-2-404, MCA, IS AMENDED TO READ:

"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right ~~in whole or~~ for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside

program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439, or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-404. (Effective July 1, 1999) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right ~~in whole or~~ for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The use of water pursuant to 85-2-439 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

85-2-404. (Effective July 1, 2005) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right ~~in whole or~~ for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter."

Section 6. Section 85-2-406, MCA, is amended to read:

"85-2-406. **District court supervision of water distribution.** (1) The district courts shall supervise

the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision ~~shall~~ must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have ~~not~~ been conclusively determined according to part 2 of this chapter ~~or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings~~, any party to the controversy ~~or any person whose rights are or may be affected by enforcement of the decree~~ may petition the district court ~~for relief~~ to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought ~~may~~ shall retain exclusive jurisdiction to grant injunctive or other relief ~~which~~ that is necessary and appropriate ~~to preserve property rights or the status quo pending the issuance of the final decree~~ pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district ~~court that issued the final decree~~ court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary

decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) ~~(a)~~ A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

~~(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter.~~"

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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